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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/786,381 | 02/25/2004 | Joseph Battiston | 629-1-033CON | 2903 |
| 23565 | 7590 | 04/22/2005 | EXAMINER | |
| KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601 | | | FETSUGA, ROBERT M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3751 | |
| DATE MAILED: 04/22/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,381

Applicant(s)

BATTISTON, JOSEPH

Examiner

Robert M. Fetsuga

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005 and 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

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1. Claims 15-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b). Claim 14 recites a "closed" bottom, and claim 17 recites a pan "capable of being in substantial alignment with a toilet". These two features, by disclosure, tailor the claims to the non-elected embodiment of Fig. 1, and applicant has not made any representations to the contrary.

2. The drawings are objected to because reference numeral "10" (pg. 7 ln. 1) is missing, and reference numeral "36" (pg. 7 ln. 13) is missing.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "toilet" set forth in claims 12 and 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant did not address this objection in any response.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the

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appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: Page 4, line 20 and page 7, line 1, "10" denotes different elements; page 5, line 25 and page 7, line 13, "36" denotes different elements; page 7, lines 13 and 17, "45" denotes different elements; and page 7, line 3, before "30'", --pan-- apparently should be inserted, lines 4 and 6, "40" apparently should be --40'--, lines 5 and 8, "42" apparently should be --42'--, and line 10, before "30", --pan-- apparently should be inserted.

Appropriate correction is required.

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4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "lower part", "wall", "elongated opening", "splash guard" and "arcuate extension", set forth in claims 12 and 25, and the "upper portion" and "lower portion" set forth in claim 26, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at page 10 of the response filed February 22, 2005 the "remaining terms" can be found at pages 4 and 5 of the instant specification. The examiner has again reviewed the specification, but did not find proper antecedent basis for the noted terms.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-14, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Battiston.

The Battiston reference discloses a pan comprising: an upper part/rim 32 including an elongate opening 34; a lower part including a circular bottom 36; and a wall/splash guard/arcuate extension/arcuate front 38, as claimed.

Applicant argues at page 11 of the response Battiston has the exact same filing date as the instant application. The examiner can not agree as no filing date benefit claim has been perfected. See MPEP 201.11, sections (C) and (D) (pages 200-53 and 200-54, May 2004). A copy of page 1 of the instant specification is attached hereto for applicant's convenience.

7. Claims 12-14, 25 and 26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Carnahan et al.

The Carnahan et al. (Carnahan) reference discloses a pan comprising: an upper part/rim 14 including an elongate opening

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(illustrated); a lower part (of 16) including a circular bottom (Figs. 2 and 3); and a wall/splash guard/arcuate extension/arcuate front 16, as claimed.

Applicant argues at pages 11-12 of the response the Carnahan splash guard 16 includes "straight, perpendicular walls", but fails to indicate how such would be relevant to the rejected claims. In any event, the splash guard walls are not perpendicular as clearly illustrated in Fig. 2.

8. Claims 12-14, 25 and 26, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klatt and Rose et al.

The Klatt reference discloses a pan comprising: an upper part/rim 35 including an elongate opening (Fig. 3); a lower part (of 33) including a circular bottom (Fig. 1); and a wall/splash guard/arcuate extension/arcuate front 33. Therefore, Klatt teaches all claimed elements except for the "arcuate extension" being shaped as illustrated in applicant's Fig. 3B.

Although the splash guard of the Klatt pan does not include an "arcuate extension", as disclosed, attention is directed to the Rose et al. (Rose) reference which discloses an analogous pan 36 which further includes an "arcuate extension" splash guard (Fig. 6). Therefore, in consideration of Rose, it would have been obvious to one of ordinary skill in the art to

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associate an "arcuate extension" splash guard with the Klatt pan in order to facilitate waste flow.

Applicant argues at page 12 of the response Klatt does not disclose a pan with a splash guard. The examiner can not agree, and notes the direct correspondence discussed supra between the elements of applicant's claims and the Klatt reference.

Applicant argues at pages 12-13 of the response Rose does not teach a gently sloping surface that facilitates waste flow. The examiner can not agree, and notes column 8, lines 6-9, in Rose.

9. Applicant's remarks have been fully considered and have been previously addressed.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

11. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

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expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is positioned above the printed name.

Robert M. Fetsuga
Primary Examiner
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